

## REMARKS

By the above amendments the substitute specification has been amended on page 15 to reference the semi-rigid, resilient characteristics of the material for the foot keel and calf shank of the present invention. There is support elsewhere in the specification for the use of these expressions, see for example page 28, lines 25 and 26. Claims 50 and 51 have been cancelled and claims 43, 44 and 46 have been amended. New dependent claim 53 has been added. Thus, claims 43, 44, 46-49 and 53 are in the application.

Claim 1 [sic, apparently claim 43] was objected to in paragraph number 4 on page 2 of the outstanding Office Action because of an informality therein. Correction was required. Responsive to the objection, by the above amendments the remaining independent claim in the application, claim 43, has been amended to change the spelling of "sagital" with --sagittal-- as required. In view of the change, it is respectfully submitted that the claims as amended are in proper form.

Claims 43, 44 and 46-51 were rejected in the outstanding Office Action under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of commonly owned U.S. Patent No. 7,374,578 B2 as stated in paragraph number 6 on page 3 of the Office Action. This rejection is hereby traversed and reconsideration thereof is respectfully requested in view of the comments set forth below.

U.S. Patent No. 7,374,578 B2 contains 23 claims. Claims 1-19 are directed to a prosthetic foot with claims 1, 9, 11, 12 and 13 being independent claims. Claims 20-23 are directed to a calf shank with claims 20 and 22 being independent claims. A feature of the claimed invention is a resilient calf

shank. The lower end of the calf shank as claimed is in the form of a spiral. These features are different from applicants' claimed invention. The application claims are not rendered obvious by the patent claims. In particular, the patent claims do not recite or render obvious the use of a resilient leg portion attached to the foot keel in a lower extremity prosthesis wherein the resilient leg portion includes a plurality of elongated, upwardly extending, generally arcuately curved in the sagittal plane, substantially vertically oriented, semi-rigid, resilient members which are spaced apart in the sagittal plane intermediate their upper and lower ends and which are anterior facing convexly curved at their lower ends to form an ankle joint area of the prosthesis and which extend upwardly above the ankle joint area to a substantially vertically oriented upstanding upper end of the leg portion, at least one of the plurality of semi-rigid resilient members being wider in the frontal plane than thick in the sagittal plane, the semi-rigid, resilient leg portion storing energy during force loading of the prosthesis and returning energy during force unloading to increase the kinetic power generated for propulsive force by the prosthesis as disclosed and claimed in independent claim 43 as amended.

Claims 43, 44 and 46-51 are provisionally rejected in the Office Action under the judicially created doctrine of obviousness-type double patenting as being unpatentable over pending claims in each of the following six applications:

- (i) pending claims of co-pending application no. 11/234,159;
- (ii) pending claims of co-pending application no. 11/411,133;
- (iii) pending claims of co-pending application no. 11/643,676;

- (iv) pending claims of co-pending application no. 11/643,677;
- (v) pending claims of co-pending application no. 10/594,797; and
- (vi) pending claims of co-pending application no. 12/886,758.

Reconsideration and withdrawal of the provisional rejections are respectfully requested in view of the following remarks. Each of the applications referred to in (i), (ii) and (iii) has been abandoned such that the propriety of these provisional rejections has been rendered moot. There are no longer pending claims in these applications on which to base the provisional rejections. The application (v) issued as U.S. Patent No. 7,955,399 on June 7, 2011. The claims of the patent do not disclose or render obvious the lower extremity prosthesis of the present application claims as amended. Claims of the patent do not disclose or suggest a semi-rigid, resilient leg portion attached to a foot keel, the leg portion having a plurality of semi-rigid, resilient members as disclosed and claimed by Applicants. The present application claims are not rendered obvious by the claims of U.S. Patent No. 7,955,399. The application (iv) is now U.S. Patent No. 7,954,502 issued June 7, 2011. This patent of application (iv) and the claims in application (vi) are in later-filed applications than the present application. The claims in the present, earlier filed application should not be rejected based upon the claims in the later-filed application, but should be permitted to issue as a patent without a terminal disclaimer in accordance with MPEP §804.

Claims 43, 44 and 46-51 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a), as obvious over F.W. Neubert, U.S. 0,450,297, as stated on pages 4-6 of the Office Action.

Claims 43, 44 and 46-51 are further rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Atkinson, et al., U.S. 2002/0087216 A1 as set forth on pages 7-9 of the Office Action.

These rejections are hereby traversed and reconsideration thereof is respectfully requested in view of the above amendments to the claims and the remarks set forth below.

The patent to Neubert discloses an artificial limb. As seen in the patent drawings, the artificial limb does not have a semi-rigid, resilient foot keel but rather is formed of rigid blocks of wood 2 and 3 which are articulated with respect to each other at a wooden pin 14. The artificial limb of Neubert also fails to provide a semi-rigid resilient leg portion attached to a foot keel as disclosed and claimed by Applicants. In addition, Neubert fails to teach or suggest a resilient leg portion including a plurality of elongated, upwardly extending, generally arcuately curved in the sagittal plane, substantially vertically oriented, semi-rigid, resilient members which are spaced apart in the sagittal plane intermediate their upper and lower ends and which are anterior facing convexly curved at their lower ends to form an ankle joint area of the prosthesis as recited in the application claims as amended. The tendon 17 of the heel/back muscle in Neubert is not generally arcuately curved in the sagittal but extends straight vertically as seen in Figure 1.


The prosthetic walking system of Atkinson, et al., particularly the referenced embodiments of Figures 11, 13 and 20, employ a resilient cord, paragraph [0095] or link assembly, paragraph [0117]. Atkinson, et al. do not teach or suggest the semi-rigid, resilient leg portion including a plurality of

elongated, upwardly extending, generally arcuately curved in this sagittal plane, substantially vertically oriented semi-rigid, resilient members which are spaced apart in the sagittal plane intermediate their upper and lower ends and which are anterior facing convexly curved at their lower ends to form an ankle joint area of their prosthesis as disclosed and claimed by Applicants in the claims as amended.

In view of the above amendments and remarks, reconsideration and allowance of the amended claims is respectfully requested.

Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (Case No. 183.39735AX9) and please credit any excess fees to such deposit account.

Respectfully submitted,

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